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No. 96-976

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JOHN HUDSON, LARRY BARESEL,
and JACK BUTLER RACKLEY,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 17, 1996
CERTIORARI GRANTED APRIL 14, 1997

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NOTICE

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari:

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L.	Stipulation and Consent Order Signed by John Hudson on October 26, 1989	129a
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 92-CR-152-ALL

UNITED STATES OF AMERICA,
Plaintiffs,

v.

JOHN HUDSON, *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

Date	No.	PROCEEDINGS
1/29/93	59	MOTION by defendant Larry Baresel to dismiss indictment on grounds of double jeopardy and motion to adopt co-dft's plea of double jeopardy (hm) [Entry date 02/01/93]
1/29/93	60	BRIEF IN SUPPORT by defendant Larry Baresel regarding mtn to dismiss indictment on grounds of double jeopardy and motion to adopt co-dft's plea of double jeopardy [59-1] (hm) [Entry date 02/01/93]
1/29/93	61	MOTION by defendant John Hudson to dismiss indictment on grounds of double jeopardy (hm) [Entry date 02/01/93]
1/29/93	62	BRIEF IN SUPPORT by defendant John Hudson regarding mnt to dismiss indictment on grounds of double jeopardy [61-1] (hm) [Entry date 02/01/93]
1/29/93	63	MOTION by defendant Jack Butler Rackley to dismiss indictment on grounds of double jeopardy (hm) [Entry date 02/01/93]

Date	No.	PROCEEDINGS
2/16/93	74	CONSOLIDATED RESPONSE by plaintiff USA to motion by defendant Jack Butler Rackley to dismiss indictment on grounds of double jeopardy [63-1], motion by defendant John Hudson to dismiss indictment on grounds of double jeopardy [61-1], motion by defendant Larry Baresel to dismiss indictment on grounds of double jeopardy and motion to adopt co-dft's plea of double jeopardy [59-1] (hm) [Entry date 02/17/93]
3/25/93	84	ORDER by Honorable Ralph G. Thompson denying motion by defendant Jack Butler Rackley to dismiss indictment on grounds of double jeopardy [63-1], denying motion by defendant John Hudson to dismiss indictment on grounds of double jeopardy [61-1], denying motion by defendant Larry Baresel to dismiss indictment on grounds of double jeopardy and motion to adopt co-dft's plea of double jeopardy [59-1] (cc: all counsel) (hm) [Entry date 03/26/93]
3/30/93	86	NOTICE OF APPEAL by defendant John Hudson from Dist. Court decision (cc: all counsel), order entered 3-25-93-n/s (sa) [Entry date 03/30/93]
3/30/93	88	NOTICE OF APPEAL by defendant Larry Baresel from Dist. Court decision (cc: all counsel), order entered 3-25-93 w/s CCA #93-6123 (sa) [Entry date 03/31/93] [Edit date 04/12/93]
3/31/93	90	NOTICE OF APPEAL by defendant Jack Butler Rackley from Dist. Court decision (cc: all counsel), order entered 3-25-93-w/s (CCA #93-6125) (sa) [Entry date 04/02/93] [Edit date 04/12/93]

Date	No.	PROCEEDINGS
3/22/94	106	ENTER ORDER by Honorable Ralph G. Thompson: An evidentiary hrg on the issue of money sanctions, pursuant to the mandate issued March 10, 1994 by the US Ct of Appeal for the Tenth Circuit is hereby scheduled for 9:30 am on Thursday, April 7, 1994 before the Honorable Ralph G. Thompson, US District Judge, Courtroom #4 re [105-1], re [104-1], re [103-1] evidentiary hearing Thursday, 4/7/94 9:30 am (cc: all counsel) (hm) [Entry date 03/23/94]
4/18/94	—	TRANSCRIPT of Evidentiary Hearing on Money Sanctions Issue held on April 7, 1994 by CSR Larry E. Marks (hm) [Entry date 04/20/94]
12/16/94	121	ORDER by Honorable Ralph G. Thompson dismissing counts as to John Hudson, Larry Baresel, Jack Butler Rackley, John Hudson (1) count(s) 1, 2-22. The indictments would subject defendant to double jeopardy, and the indictment is dismissed, Larry Baresel (2) count(s), 1, 2, 4-7, 9-13, 16, 18, 20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Larry Baresel (2) count(s) 1, 2, 4-7, 9-13, 16, 18, 20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Jack Butler Rackley (3) count(s) 1, 2, 4-7, 8, 9-10, 12-18, 19, 20-22. The indictments would subject defendants to double jeopardy, the indictment is dismissed party John Hudson, party Larry Baresel, party Jack Butler Rackley, case dismissed as to John Hudson, Larry Baresel, Jack Butler Rackley, John Hudson (1) count(s) 1, 2-22. The indictments would subject defendant to double jeopardy, and the

Date	No.	PROCEEDINGS
		indictment is dismissed, Larry Baresel (2) count(s) 1, 2, 4-7, 9-13, 16, 18, 20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Larry Baresel (2) count(s) 1, 2, 4-7, 9-13, 16, 18, 20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Larry Baresel (2) count(s) 1, 2, 4-7, 9-13, 16, 18, 20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Larry Baresel (2) count(s) 1, 2, 4-7, 9-13, 16, 18 ,20-22. The indictments would subject the defendants to double jeopardy, and the indictment is dismissed, Jack Butler Rackley (3) count(s) 1, 2, 4-7, 8, 9-10, 12-18, 19, 20-22. The indictments would subject defendants to double jeopardy, the indictment is dismissed (cc: all counsel) (bm) [Entry date 12/19/94]
1/12/95	122	NOTICE OF APPEAL by plaintiff USA from Dist. Court decision [121-3] order entered 12-16-94w/s (cc: all counsel) (sa) [Entry date 01/13/95]
10/3/96	128	CCA's cert cpy of judg & opin MANDATE (reversed, remanded) [122-1] (Tacha, Logan & Reavley) (#95-6030) (John Hudson, Larry Baresel & Jack B. Rackley) (sa) [Entry date 10/03/96]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 95-6030

UNITED STATES OF AMERICA,
Plaintiff-Appellant,
v.
JOHN HUDSON, *et al.*,
Defendants-Appellees.

RELEVANT DOCKET ENTRIES

Date	No.	PROCEEDINGS
11/16/95	27	[899742] Case argued and submitted to Judges Tacha, Logan, Reavley. (sls)
8/8/96	36	[964560] Terminated on the Merits after Oral Hearing; Reversed and Remanded; Written, Signed, Published. Tacha; Logan; Reavley, authoring judge. [95-6030] (dmc)
9/20/96	41	[974849] Order filed by Judge(s) Tacha, Logan, Reavley denying Petition for rehearing in banc [969482-1] (oac)
9/30/96	42	[976641] Mandate issued. Mandate receipt due 10/30/96 (dmc)
10/9/96	43	[979775] Mandate receipt filed. (dmc)
11/20/96	44	[987943] Case file closed. 11/20/98 (gra)
12/30/96	45	[997803] Petition for writ of certiorari filed on 12/17/96 by Appellant USA. Supreme Court Number 96-976. (pjs)
4/18/97	46	[1027491] Supreme Court order dated 4/14/97 granting certiorari filed. (pjs)

[Filed Aug. 25, 1992]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CR 92-152 T

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,
Defendants.

Violation: 18 USC § 371
18 USC § 656
18 USC § 2
18 USC § 1005

INDICTMENT

The Federal Grand Jury charges:

I. INTRODUCTION

AT ALL TIMES MATERIAL TO THIS INDICTMENT:

1. The Office of the Comptroller of the Currency (OCC) was an agency of the United States established to charter, supervise and regulate national banks.

2. The Federal Deposit Insurance Corporation (FDIC) was an agency of the United States established to protect depositors by insuring deposits in insured banking institutions.

3. As part of its regulatory function, the FDIC was empowered to examine member banks to insure, among other things, that loans were adequately supported by collateral or financial statements; that the bank was not loaning too much money, compared to the bank's size, to any particular customer; and that the bank was not engaged in any other unsound banking practices which might expose the bank to a risk of substantial loss.

THE FINANCIAL INSTITUTIONS

4. The First National Bank, Tipton, Oklahoma, (Tipton) was a nationally-chartered bank, the deposits of which were insured by the FDIC.

5. The First National Bank, Hammon, Oklahoma, (Hammon) was a nationally-chartered bank, the deposits of which were insured by the FDIC.

6. The First State Bank, Blanchard, Oklahoma, (Blanchard) was a state-chartered bank, the deposits of which were insured by the FDIC.

7. The First State Bank, Willow, Oklahoma (Willow) was a state-chartered bank, the deposits of which were insured by the FDIC.

8. The Bank of Granite, Granite, Oklahoma, (Granite), was a state-chartered bank, the deposits of which were insured by the FDIC.

9. The First National Bank of Del City, Oklahoma, (Del City) was a nationally-chartered bank, the deposits of which were insured by the FDIC.

10. MBank, Dallas, Texas (MBank) was a nationally-chartered bank, the deposits of which were insured by the FDIC.

THE DEFENDANTS

11. JOHN HUDSON was an attorney licensed to practice law in the State of Oklahoma. HUDSON, either individually or through various holding companies, was

also the majority owner of Tipton, Hammon, Blanchard, Willow, and Granite banks (collectively referred to in this Indictment as "the HUDSON banks").

12. LARRY BARESEL was an attorney licensed to practice law in the State of Oklahoma, and was JOHN HUDSON's law partner. BARESEL was a member of the Tipton Board of Directors from October 1986 until September 1987, and was a member of the Hammon Board of Directors from January 1986 until September 1987.

13. JACK BUTLER RACKLEY was the president and chairman of the Board of Directors of Tipton Bank from October 1986 until September 1987; was a member of the Board of Directors of Hammon Bank from October 1986 until September 1987; and was a member of the Board of Directors at Blanchard Bank from January 1987 until August 1987. JACK BUTLER RACKLEY was also president of Executive Bank Management Services, Inc., a bank consulting company owned by HUDSON.

BUSINESS ENTITIES OF DEFENDANTS

14. SKL, Incorporated, (SKL), was an Oklahoma corporation, whose officers included Norval John Shelton III, BARESEL's brother-in-law; Roberta Shelton, BARESEL's mother-in-law; and Sharon Matthews, HUDSON and BARESEL's secretary. Sharon Matthews was also known as Sharon Cook and Sharon Gary.

15. Executive Bank Management Services, Incorporated, (EBMS), was an Oklahoma corporation in which HUDSON was sole stockholder, and which was formed to provide services to the HUDSON banks.

16. DMS Realty Advisers, Incorporated, (DMS), was an Oklahoma corporation of which LARRY BARESEL was president.

17. Macao Investment Company, Incorporated, (Macao), was an Oklahoma corporation of which HUDSON

was the sole stockholder. In December, 1986, HUDSON transferred all interest in Macao to SKL.

COUNT 1

CONSPIRACY
[18 U.S.C. § 371]

18. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

19. From in or about January, 1986, and continuing through in or about September, 1987, the exact dates being unknown to the Grand Jury, within the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, did willfully, unlawfully and knowingly combine, conspire, confederate and agree together to commit offenses against the United States, that is:

A. To willfully misapply and cause to be misapplied money of federally-insured banks, while being an officer, director, agent or employee of, or connected in any capacity with such banks, in violation of Title 18, United States Code, Section 656;

B. To make and cause to be made false entries in bank books, reports, or statements with intent to defraud and deceive the HUDSON banks, MBank, the OCC, and the FDIC, in violation of Title 18, United States Code, Section 1005.

I. PURPOSE OF THE CONSPIRACY

20. The purpose of the conspiracy was to fraudulently obtain money from the HUDSON banks through the use of nominee loans, so as to disguise HUDSON's involve-

ment; to use the proceeds of these fraudulent loans to benefit HUDSON by reducing the amount of HUDSON's indebtedness to MBank; to transfer the remaining debt to a HUDSON-controlled creditor, so that HUDSON could maintain control of the HUDSON banks; and to conceal the true nature of the loan transactions from the HUDSON banks, MBank, the OCC, and the FDIC.

II. MANNER AND MEANS OF THE CONSPIRACY

21. In order to finance his purpose of the HUDSON banks, HUDSON borrowed approximately $7.5 million, and at all times relevant to this Indictment, these promissory notes were held by MBank (these notes will be referred to in this Indictment as "the MBank notes"). The collateral for these notes included the stock in the HUDSON banks.

22. As HUDSON's creditor, MBank would periodically examine the financial condition of the HUDSON banks to guard against unsound banking practices which might adversely affect the value of its collateral.

23. In 1986, MBank's examinations of the HUDSON banks revealed unsound banking practices, which seriously undermined the financial condition of the banks and which placed MBank at a risk of substantial loss. As a result of this risk, MBank began efforts to sell the MBank notes so as to minimize the potential loss.

24. It was a part of the conspiracy that HUDSON began his own search for a person who would purchase the MBank notes at a discount, and who would transfer these notes back to a HUDSON-controlled corporation, thus allowing HUDSON to become his own creditor, maintain control over the HUDSON banks, and substantially reduce his debt at MBank.

25. It was further a part of the conspiracy that JOHN HUDSON recruited Claud Cypert to purchase the MBank notes.

26. It was further a part of the conspiracy that HUDSON, BARESEL, and RACKLEY, in order to provide Cypert with enough money to purchase the MBank notes, made and caused to be made fraudulent loans totalling $1.15 million from three of the HUDSON banks, and obtained loans at First National Bank of Del City. These loans were made in two ways:

A. JOHN HUDSON and LARRY BARESEL would recruit, or cause to be recruited, nominee borrowers. A nominee borrower is a person or corporation whose name is used for the purpose of obtaining a bank loan, when the proceeds are actually used for the benefit of another.

B. LARRY BARESEL would persuade persons or corporations to borrow funds from a HUDSON bank for the purpose of investing in SKL, while knowing that the proceed of these loans were to be used for HUDSON's benefit.

27. It was further a part of the conspiracy that HUDSON and BARESEL would assure the borrowers that one of the HUDSON banks would provide financing, and that the borrowers would not be required to go to the lending bank or provide any collateral for the loans.

28. It was further a part of the conspiracy that JOHN HUDSON, although no longer a board member, would use his position and influence as principal owner of the HUDSON banks to cause these loans to be approved and funded, regardless of the borrower's credit-worthiness or ability to repay the loans.

29. It was further a part of the conspiracy that JACK BUTLER RACKLEY used his positions at the HUDSON banks and EBMS to cause loan documents to be prepared, loans to be made, and funds to be disbursed.

30. It was further a part of the conspiracy that JOHN HUDSON, LARRY BARESEL, and JACK BUTLER

RACKLEY attempted to conceal from the HUDSON banks, MBank, the OCC, and the FDIC the fact that HUDSON was the ultimate beneficiary of the loan proceeds. These efforts to conceal included, among others:

A. Causing SKL debentures to be issued to those borrowers who believed they were investing in SKL, knowing that the funds were to be used for HUDSON'S benefit.

B. Making, or causing to be made, false entries in bank documents to disguise HUDSON's interest in the loan proceeds, and the true purpose for which the loan proceeds were used;

C. Requesting that bank officials hide loan documents to keep regulators from discovering HUDSON's interest in the loans;

D. Transferring, or causing to be transferred, the proceeds of the nominee loans through various bank accounts, including the SKL account, so that HUDSON did not appear to be the recipient of loan proceeds.

31. It was further a part of the conspiracy that JOHN HUDSON and LARRY BARESEL caused these nominee loan proceeds to be given to Claud Cypert, who then used these funds to purchase the MBank notes.

32. It was further a part of the conspiracy that BARESEL instructed Claud Cypert to transfer ownership of the MBank notes he had purchased to Macao Investment Company.

III. OVERT ACTS

In order to achieve the objects of the conspiracy, the defendants committed and caused to be committed the following overt acts, among others, in the Western District of Oklahoma:

33. On or about the dates listed below, HUDSON, BARESEL, and RACKLEY disbursed funds or made

nominee loans, or caused them to be made, to the borrowers and in the amounts listed below:

DATE	*BANK*	*BORROWER*	*AMOUNT*
12-29-86	Tipton	SKL, Inc.	$ 90,000
12-29-86	Blanchard	SKL, Inc.	100,000
12-29-86	Tipton	JACK BUTLER RACKLEY	20,000
12-30-86	Tipton	SKL, Inc.	100,000
12-30-86	Tipton	Hurley Financial	100,000
12-31-86	Hammon	JACK BUTLER RACKLEY	90,000
12-31-86	Hammon	SKL	90,000
12-31-86	Hammon	Hurley Financial	60,000

34. A. In the fall of 1986, BARESEL contacted Barry Neal Hurley and persuaded him to invest in SKL, telling Hurley that one of the HUDSON banks would finance the investment.

B. In December, 1986, at a meeting at HUDSON and MARESEL's law office, RACKLEY gave Hurley a $100,000 cashier's check drawn on Tipton, after Hurley signed a blank note.

C. RACKLEY instructed Hurley to exchange this cashier's check for a cashier's check payable to SKL and deliver this cashier's check to BARESEL.

35. In December, 1986, RACKLEY prepared two cashier's checks drawn on Tipton, one payable to SKL for $100,000, the other payable to Hurley Financial for $100,000.

36. Upon the funding of each loan or disbursement listed in paragraph 33, HUDSON and BARESEL deposited the proceeds, or caused them to be deposited, into SKL's bank account.

37. On December 30, 1986, HUDSON and BARESEL caused a check in the amount of $400,000 to be drawn on SKL's account, payable to Macao.

38. On December 30, 1986, HUDSON and BARESEL caused this check to be used to purchase a $400,000

cashier's check payable to Claud Cypert, showing Macao as remitter (the purchaser) of the cashier's check.

39. On December 30, 1986, BARESEL gave this cashier's check to Claud Cypert and instructed Cypert to exchange it for another cashier's check in the same amount, made payable to MBank, showing Cypert as remitter.

40. On or about December 30, 1986, BARESEL accompanied Cypert to MBank, where the MBank notes secured by the stock in the Hammon and Tipton banks were sold to Cypert for $400,000.

41. Immediately thereafter, BARESEL instructed Cypert to assign these notes to Macao.

42. On or about the dates listed below, HUDSON, BARESEL, and RACKLEY made nominee loans, or caused them to be made, to the borrowers and in the amounts listed below:

DATE	*BANK*	*BORROWER*	*AMOUNT*
2-20-87	Tipton	Claud Cypert	$ 90,000
2-20-87	Hammon	Claud Cypert	90,000
2-23-87	Tipton	Tom Lucas	60,000
2-24-87	Del City	SKL	70,000
2-24-87	Tipton	Jack Marshall	93,000
2-24-87	Hammon	Jack Marshall	92,000
2-25-87	Tipton	David Tuck	30,000
2-25-87	Hammon	David Tuck	20,000
2-25-87	Tipton	Hal Clifford	50,000
2-26-87	Blanchard	JACK BUTLER RACKLEY	60,000
2-26-87	Blanchard	Partridge Capital Corp	100,000
2-26-87	Blanchard	Tom Lucas	40,000
2-27-87	Hammon	Sharon Matthews	10,000

43. A. On or about February 19, 1987, HUDSON asked David Tuck to sign blank loan documents which HUDSON stated were to renew earlier

loans, but which were actually used to fund new loans at Hammon and Tipton.

B. On or about February 25, 1987, RACKLEY approved these two loans and caused them to be funded.

C. Thereafter, RACKLEY caused cashier's checks totaling $50,000 to be drawn on Hammon and Tipton, payable to DMS, showing David Tuck as remitter.

D. On February 27, 1987, BARESEL endorsed these two cashier's checks as president of DMS.

E. BARESEL then caused a cashier's check to be purchased with the cashier's checks described in paragraph 43(C), in the amount of $50,000, payable to SKL, showing DMS as remitter.

4. A. In February, 1987, BARESEL contacted Tom Lucas and persuaded him to invest in SKL and assured him that a HUDSON bank would finance the investment, despite Lucas' inability to repay the loans.

B. BARESEL then had Lucas sign two notes and provided him with two cashier's checks totaling $100,000, drawn on Blanchard and Tipton.

C. BARESEL then instructed Lucas to deposit the checks into Lucas' bank account at Bank of the Northwest in Woodward, Oklahoma, and to then purchase a cashier's check at Bank of the Northwest payable to SKL.

D. Thereafter, BARESEL met Lucas in Watonga, Oklahoma, where Lucas delivered to BARESEL the cashier's check payable to SKL.

45. A. In February, 1987, HUDSON requested that Ronald Collier, president of First National Bank in Del City, loan money to HUDSON using SKL, BARESEL, and EBMS as nominees.

B. HUDSON gave Collier his personal guaranty for the loans, but asked Collier to keep these guaranty documents out of the loan file so that regulators would not learn of HUDSON's interest in the loan proceeds.

46. Upon the funding of the loans listed in paragraph 42, with the exception of the two loans to Claud Cypert and the loan to Hal Clifford, HUDSON and BARESEL caused the loan proceeds to be deposited into SKL's bank account.

47. In February, 1987, BARESEL told Cypert that Macao was short of funds to complete the purchase of the notes on Willow and Granite, and asked Cypert to borrow enough funds to make up the deficit.

48. On February 20, 1987, RACKLEY approved and caused to be funded loans to Cypert from Hammon and Tipton, totalling $180,000.

49. On February 26, 1987, HUDSON and BARESEL caused a $520,000 check to be drawn on SKL's account, payable to Macao.

50. A. On February 26, 1987, HUDSON and BARESEL caused a $50,000 check written by Hal Clifford, representing the proceeds of his loan, to be deposited into the EBMS bank account.

B. On February 26, 1987, HUDSON and BARESEL caused EBMS to purchase a cashier's check in the amount of $50,000, payable to Macao Investments. This cashier's check, together with the check described in paragraph 49, were used to purchase a cashier's check for $570,000, payable to Claud Cypert, showing Macao Investment Company as remitter.

51. In February, 1987, BARESEL gave Cypert the $570,000 cashier's check described in paragraph 50(B), and instructed him to exchange this check and the two

loan proceeds checks described in paragraph 48 for a single cashier's check for $750,000, payable to MBank, showing Cypert as remitter.

52. On February 27, 1987, BARESEL accompanied Cypert to MBank, where the MBank notes secured by the stock in the Willow and Granite banks were sold to Cypert.

53. In addition, the Grand Jury incorporates by reference as additional overt acts the allegations contained in Counts 2 through 22 of this Indictment, as though fully set forth herein.

All in violation of Title 18, United States Code, Section 371.

COUNT 2

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to SKL in the amount of $90,000;

B. Caused the promissory note to falsely state that the loan was for SKL's "business investments" while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Tipton, causing $90,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 3

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,

the defendant herein, being connected with the First State Bank, Blanchard, Oklahoma, as principal owner, with the intent to injure and defraud First State Bank, Blanchard, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First State Bank, Blanchard, in an amount in excess of $100.

3. In particular, the defendant:

A. Made and caused to be made a nominee loan to SKL in the amount of $100,000;

B. Caused the promissory note to falsely state that the loan was for SKL's "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First State Bank, Blanchard, causing $100,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 4

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 30, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Prepared and caused to be prepared a cashier's check in the amount of $100,000, payable to SKL;

B. Caused the cashier's check to falsely state that it represented loan proceeds, although in fact no such loan to SKL had been made, and knowing that the proceeds of this cashier's check were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the proceeds of this cashier's check in any book or record of First National Bank, Tipton, causing $100,000 to be disbursed under a record which misrepresented the true nature of the transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 5

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to the Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 30, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and

intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Prepared and caused to be prepared a cashier's check in the amount of $100,000, payable to Hurley Financial Corporation;

B. Caused the cashier's check to falsely state that it represented loan proceeds, although in fact no such loan to Hurley Financial Corporation had been made, and knowing that the proceeds of this cashier's check were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the proceeds of this cashier's check in any book or record of First National Bank, Tipton, causing $100,000 to be disbursed under a record which misrepresented the true nature of the transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 6

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY, as

president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to RACKLEY in the amount of $20,000;

B. Caused the promissory note to falsely state that the loan was for "business investment" by RACKLEY, while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceds in any book or record of First National Bank, Tipton, causing $20,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 7

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the

Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Hammon, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to RACKLEY in the amount of $90,000;

B. Caused the promissory note to falsely state that the loan was for "business and real estate investment" by RACKLEY, while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $90,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 8

FALSE ENTRY IN BANK RECORD
[18 U.S.C. § 1005]

1. Paragraphs 1 through 17 of this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about November 26, 1986, in the Western District of Oklahoma,

JACK BUTLER RACKLEY,

the defendant herein, knowingly and with intent to deceive the directors of Tipton, the OCC, and the FDIC, caused a materially false entry to be made in the records of First National Bank, Tipton, Oklahoma, by falsely reporting to

the Board of Directors that he had borrowed $90,000 from the First National Bank, Hammon, for the purpose of making a real estate investment, when in truth and in fact, as RACKLEY well knew, the proceeds of this $90,000 were to be used for another purpose, that is, for HUDSON'S benefit.

All in violation of Title 18, United States Code, Section 1005.

COUNT 9

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Hammon, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to SKL in the amount of $90,000;

B. Caused the promissory note to falsely state that the loan was for a "business and real estate

investment' by SKL, while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionaly failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $90,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 10

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about December 29, 1986, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Hammon, did wilfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Hurley Financial Corporation in the amount of $60,000;

B. Caused the promisory note to falsely state that the loan was for "business operations" of Hurley Financial, while knowing that the loan procedes were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $60,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 11

MISAPPLICATION OF FUNDS
[18 U.S.C. §656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 24, 1987, in the Western District of Oklahoma,

JOHN HUDSON and
LARRY BARESEL,

the defendants, aided and abetted Ronald L. Collier who was connected with the First National Bank of Del City, Del City, Oklahoma, as president of said bank, with the intent to injure and defraud the First National Bank of Del City, did procure the misapplication of monies, funds and credits belonging to and intrusted to the care of First National Bank of Del City in an amount in excess of $100.

3. In particular, the defendants:

A. HUDSON requested that a loan from First National Bank of Del City be made to him through SKL, BARESEL, and EBMS as nominee borrowers;

B. BARESEL signed a promissory note at First National Bank of Del City, knowing that the proceeds of the loan were to be used for HUDSON'S benefit;

C. Caused the loan documents to reflect that money was being loaned to SKL, knowing that the proceeds were actually to be used by HUDSON for his own benefit;

D. Requested that Collier intentionally fail to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank of Del City, causing $70,000 to be disbursed to SKL under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 12

MISAPPLICATION OF FUNDS
[18 U.S.C. §656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 24, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to

be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Jack Marshall in the amount of $93,000;

B. Caused the promissory note to falsely state that the loan was for Jack Marshall's "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Tipton, causing $93,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 13

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 24, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the

intent to injure and defraud the First National Bank, Hammon, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Jack Marshall in the amount of $92,000;

B. Caused the promissory note to falsely state that the loan was for "business investment" by Jack Marshall, while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $92,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 14

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 26, 1987, in the Western District of Oklahoma,

JOHN HUDSON and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First State Bank, Blanchard, Oklahoma: JOHN HUDSON as principal owner, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the

intent to injure and defraud the First State Bank, Blanchard, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First State Bank, Blanchard, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Jack Rackley in the amount of $60,000.

B. Caused the promissory note to falsely state that the loan was for RACKLEY'S "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose Hudson's interest in the loan proceeds in any book or record of First State Bank, Blanchard, causing $60,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 15

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 26, 1987, in the Western District of Oklahoma,

JOHN HUDSON and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First State Bank, Blanchard, Oklahoma: JOHN HUDSON as principal owner, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First State Bank, Blan-

chard, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First State Bank, Blanchard, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Partridge Capital Corporation in the amount of $100,000;

B. Caused the promissory note to falsely state that the loan was for Partridge Capital Corporation's "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First State Bank, Blanchard, causing $100,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 16

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 20, 1987, in the Western Distirct of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of

the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Tom Lucas in the approximate amount of $60,000;

B. Caused the promissory note to falsely state that the loan was for Tom Lucas' "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Tipton, causing $60,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 17

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 26, 1987, in the Western District of Oklahoma,

JOHN HUDSON and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First State Bank, Blanchard, Oklahoma: JOHN HUDSON as

principal owner, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First State Bank, Blanchard, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First State Bank, Blanchard, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to Tom Lucas in the amount of $40,000;

B. Caused the promissory note to falesely state that the loan was for Tom Lucas' "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First State Bank, Blanchard, causing $40,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 18

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 23, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as

principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did wilfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a nominee loan to David Tuck in the approximate amount of $30,000;

B. Caused the promissory note to falsely state that the loan was for David Tuck's "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Tipton, causing $30,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 19

FALSE ENTRY IN BANK RECORD
[18 U.S.C. § 1005]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 22, 1987, in the Western District of Oklahoma,

JACK BUTLER RACKLEY,

the defendant herein, knowingly and with intent to deceive the directors of Tipton, the OCC, and the FDIC,

made a materially false entry in the records of First National Bank, Tipton, Oklahoma, by falsely stating in a credit memorandum on David Tuck that the source of Tuck's funds to repay a loan was "income from DMS Realty and Law Practice,' 'and further stating that Tuck was a Chickasha attorney, all of which as RACKLEY was aware, were untrue.

All in violation of Title 18, United States Code, Section 1005.

COUNT 20

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 19, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Hammon, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made ad caused to be made a nominee loan to David Tuck in the approximate amount of $20,000;

B. Caused the promissory note to falsely state that the loan was for "Real Estate Construction—Operating Expense" for David Tuck, while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $20,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 21

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 16, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Tipton, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as president and member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Tipton, did willfully misapply and cause to be misapplied monies funds and credits belonging to and intrusted to the care of First National Bank, Tipton, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a loan to Claud Cypert in the approximate amount of $90,000;

B. Caused the promissory note to falsely state that the loan was for Cypert's "business," while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Tipton, causing $90,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

COUNT 22

MISAPPLICATION OF FUNDS
[18 U.S.C. § 656 & § 2]

1. Paragraphs 1 through 17 of the Introduction to this Indictment are realleged and incorporated as though fully set forth herein.

2. On or about February 23, 1987, in the Western District of Oklahoma,

JOHN HUDSON,
LARRY BARESEL, and
JACK BUTLER RACKLEY,

the defendants herein, being connected with the First National Bank, Hammon, Oklahoma: JOHN HUDSON as principal owner, LARRY BARESEL as a member of the Board of Directors, and JACK BUTLER RACKLEY as member of the Board of Directors of said bank, with the intent to injure and defraud the First National Bank, Hammon, did willfully misapply and cause to be misapplied monies, funds and credits belonging to and intrusted to the care of First National Bank, Hammon, in an amount in excess of $100.

3. In particular, the defendants:

A. Made and caused to be made a loan to Claud Cypert in the approximate amount of $90,000;

B. Caused the promissory note to falsely state that the loan was for "Operating Capitol [sic] Blue [sic] energy,' while knowing that the loan proceeds were to be used for HUDSON'S benefit;

C. Intentionally failed to disclose HUDSON'S interest in the loan proceeds in any book or record of First National Bank, Hammon, causing $90,000 to be disbursed under a record which misrepresented the true nature of the loan transaction.

All in violation of Title 18, United States Code, Sections 656 and 2.

JOE HEATON
United States Attorney

/s/ Timothy W. Ogilvie
TIMOTHY W. OGILVIE
Assistant U.S. Attorney

/s/ Barbara E. Poarch
BARBARA E. POARCH
Assistant U.S. Attorney

A TRUE BILL:

/s/ [illegible]
Foreman of the Grand Jury

HUDSON

EXHIBIT "4"

Pet. app., p. 55a

CMP MATRIX

	0	1	2	3	4	Weight Factor	Final Figure
Willful	No		Should Have Known	X	Clear Intent	5	15
Insider	No			Indirect Benefit to Director or Officer or Related Int.	Direct Benefit to Director or Officer or Related Int.	3 X	12
Prev. Adm. Action or Warning	None		Cited in ROSA X	Agreement on Point	C&D on Point or Prior Supervisory Let. on Point	3	6
History	None	Unrelated Prior Violations	Occasional Similar Violations		Repeated Similar Violations X	2	8
Loss	No Loss and No Risk of Loss	No Loss and Low to Moderate Risk	Low to Moderate Loss and Risk		Large Amt. of Actual or Potential Loss X	5	20
Number of Violations					Significant or Numerous Violations X	2	8
Duration of Violations				X	Violation(s) Outstanding for Long Period	2	6
Continuation	Violation(s) Ceased Prior to Notification	Violations Ceased Immediately Upon Notification		Violation(s) X Continued for Period of Time After Notification	Violations Still Continuing	3	9
Concealment	None			Purposely Complicated X Transaction to Make it Difficult to Uncover	Active Concealment From Examiners	5	15
Impact	No Impact on Banking Industry		X		Substantial Impact on Banking Industry or on Public Perception of Banking Industry	6	12
Subtotal 1							111
Restitution	No Restitution X	Complete Restitution Under Compulsion (e.g., Threat of Losing Job)	Partial Restitution	Complete Restitute Immed After Loss or Violation Brought to Attention	Complete Restitution Voluntarily, Before Bank or Examiner Uncovered Loss	2	∅
Good Faith	None X		Unwitting Pawn		Unintentional Violation	3	∅
Full Cooperation	None	X			Forthcoming in Interviews & Depositions & Willing to Testify	2	2
Subtotal 2							2
Total (Subtract 2 From 1)							109

NOTE: Boxes on the Matrix (including the empty boxes) should be used to reflect progressive levels of severity

+ $100M

JANUARY 1988

BEST AVAILABLE COPY

TITLE 12—BANKS AND BANKING
CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 32—LENDING LIMITS

12 CFR 32.5

§ 32.5 Combination rules.

(a) General rule. Loans or extensions of credit to one borrower will be attributed to another person and each person will be deemed a borrower—

(1) When proceeds of a loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used; or

(2) When a common enterprise is deemed to exist between the persons.

(b) Direct benefit. The proceeds of a loan or extension of credit to a borrower will be deemed to be used for the direct benefit of another person and will be attributed to the other person when the proceeds, or assets purchased with the proceeds, are transferred to another person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) Common enterprise. A common enterprise will be deemed to exist and loans to separate borrowers will be aggregated:

(1) When the expected source of repayment for each loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan (together with the borrower's other obligations) may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of paragraph (c)(2) of this section are met;

(2) When loans or extensions of credit are made—

(i) To borrowers who are related directly or indirectly through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(ii) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence is deemed to exist when 50 percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

(3) When separate persons borrow from a bank to acquire a business enterprise of which those borrowers will own more than 50 percent of the voting securities or voting interests, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

(4) When the OCC determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

(d) Special rule for loans to a corporate group. (1) Loans or extensions of credit by a bank to a corporate group may not exceed 50 percent of the bank's capital and surplus. This limitation applies only to loans subject to the combined general limit. A corporate group includes a person and all of its subsidiaries. For purposes of this paragraph, a corporation or a limited liability company is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or company.

(2) Except as provided in paragraph (d)(1) of this section, loans or extensions of credit to a person and its

subsidiary, or to different subsidiaries of a person, are not combined unless either the direct benefit or the common enterprise test is met.

(e) Special rules for loans to partnerships, joint ventures, and associations.—(1) Partnership loans, Loans or extensions of credit to a partnership, joint venture, or association are deemed to be loans or extensions of credit to each member of the partnership, joint venture, or association. This rule does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

(2) Loans to partners. (i) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the direct benefit or the common enterprise tests are met. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

(ii) Loans or extensions of credit to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the direct benefit or common enterprise test is met.

(f) Loans to foreign governments, their agencies, and instrumentalities.—(1) Aggregation. Loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be aggregated with one another only if the loans or extensions of credit fail to meet either the means test or the purpose test at the time the loan or extension of credit is made.

(i) The means test is satisfied if the borrower has resources or revenue of its own sufficient to service its debt obligations. If the government's support (excluding guarantees by a central government of the borrower's debt) exceeds the borrower's annual revenues from other sources, it will be presumed that the means test has not been satisfied.

(ii) The purpose test is satisfied if the purpose of the loan or extension of credit is consistent with the purposes of the borrower's general business.

(2) Documentation. In order to show that the means and purpose tests have been satisfied, a bank must, at a minimum, retain in its files the following items:

(i) A statement (accompanied by supporting documentation) describing the legal status and the degree of financial and operational autonomy of the borrowing entity;

(ii) Financial statements for the borrowing entity for a minimum of three years prior to the date the loan or extension of credit was made or for each year that the borrowing entity has been in existence, if less than three;

(iii) Financial statments for each year the loan or extension of credit is outstanding;

(iv) The bank's assessment of the borrower's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrower's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrower by third parties, including the borrower's central government; and

(v) A loan agreement or other written statement from the borrower which clearly describes the purpose of the loan or extension of credit. The written representation will ordinarily constitute sufficient evidence that the pur-

pose test has been satisfied. However, when, at the time the funds are disbursed, the bank knows or has reason to know of other information suggesting that the borrower will use the proceeds in a manner inconsistent with the written representation, it may not, without further inquiry, accept the representation.

(3) Restructured loans. (i) Non combination rule. Notwithstanding paragraphs (a) through (e) of this section, when previously outstanding loans and other extensions of credit to a foreign government, its agencies, and instrumentalities (i.e., public-sector obligors) that qualified for a separate landing limit under paragraph (f)(1) of this section are consolidated under a central obligor in a qualifying restructuring, such loans will not be aggregated and attributed to the central obligor. This includes any substitution in named obligors, solely because of the restructuring. Such loans (other than loans originally attributed to the central obligor in their own right) will not be considered obligations of the central obligor and will continue to be attributed to the original public-sector obligor for purposes of the lending limit.

(ii) Qualifying restructuring. Loans and other extensions of credit to a foreign government, its agencies, and instrumentalities will qualify for the non-combination process under paragraph (f)(3)(i) of this section only if they are restructured in a sovereign debt restructuring approved by the OCC, upon request by a bank for application of the non combination rule. The factors that the OCC will use in making this determination include, but are not limited to, the following:

(A) Whether the restructuring involves a substantial portion of the total commercial bank loans outstanding to the foreign government, its agencies, and instrumentalities;

(B) Whether the restructuring involves a substantial number of the foreign country's external commercial bank creditors;

(C) Whether the restructuring and consolidation under a central obligor is being done primarily to facilitate external debt management; and

(D) Whether the restructuring includes features of debt or debt-service reduction.

(iii) 50 percent aggregate limit. With respect to any case in which the non-combination process under paragraph (f)(3)(i) of this section applies, a national bank's loans and other extensions of credit to a foreign government, its agencies and instrumentalities (including restructured debt) shall not exceed, in the aggregate, 50 percent of the bank's capital and surplus.

TITLE 12 BANKS AND BANKING
CHAPTER II—FEDERAL RESERVE SYSTEM
SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)
SUBPART A—LOANS BY MEMBER BANKS TO THEIR EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS

12 CFR 215.4

§ 215.4 General prohibitions.

(a) Terms and creditworthiness—(1) In general. No member bank may extend credit to any insider of the bank or insider of its affiliates unless the extension of credit:

(i) Is made on substantially the same terms (including interest rates and collateral) as, and following credit underwriting procedures that are not less stringent than those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this part and who are not employed by the bank; and

(ii) Does not involve more than the normal risk of repayment or present other unfavorable features.

(2) Exception. Nothing in this paragraph (a) or paragraph (e)(2)(ii) of this section shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) That is widely available to employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(ii) That does not give preference to any insider of the member bank over other employees of the member bank

and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

(b) Prior aproval. (1) No member bank may extend credit (which term includes granting a line of credit) to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit to that person and to all related interests of that person, exceeds the higher of $25,000 or 5 percent of the member bank's unimpaired capital and unimpaired surplus, unless:

(i) The extension of credit has been approved in advance by a majority of the entire board of directors of that bank; and

(ii) The interested party has abstained from participating directly or indirectly in the voting.

(2) In no event may a member bank extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with all other extensions of credit to that person, and all related interests of that person, exceeds $500,000, except by complying with the requirements of this paragraph (b).

(3) Approval by the board of directors under paragraphs (b)(1) and (b)(2) of this section is not required for an extension of credit that is made pursuant to a line of credit that was approved under paragraph (b)(1) of this section within 14 months of the date of the extension of credit. The extension of credit must also be in compliance with the requirements of § 215.4(a) of this part.

(4) Participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on an extension of credit.

(c) Individual lending limit—No member bank may extend credit to any insider of the bank or insider of its affiliates in an amount that, when aggregated with the amount of all other extensions of credit by the member bank to that person and to all related interests of that person, exceeds the lending limit of the member bank specified in § 215.2(i) of this part. This prohibition does not apply to an extension of credit by a member bank to a company of which the member bank is a subsidiary or to any other subsidiary of that company.

(d) Aggregate lending limit—(1) General limit. A member bank may not extend credit to any insider of the bank or insider of its affiliates unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all such insiders, does not exceed the bank's unimpaired capital and unimpaired surplus (as defined in § 215.2(i) of this part).

(2) Member banks with deposits of less than $100,000,000. (i) A member bank with deposits of less than $100,000,000 may by an annual resolution of its board of directors increase the general limit specified in paragraph (d)(1) of this section to a level not to exceed two times the bank's unimpaired capital and unimpaired surplus, if:

(A) The board of directors determines that such higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to its insiders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities.

(B) The resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(C) The bank meets or exceeds, on a fully-phased in basis, all applicable capital requirements established by the appropriate Federal banking agency; and

(D) The bank received a satisfactory composite rating in its most recent report of examination.

(ii) If a member bank has adopted a resolution authorizing a higher limit pursuant to paragraph (d)(2)(i) of this section and subsequently fails to meet the requirements of paragraph (d)(2)(i)(C) or (d)(2)(i)(D) of this section, the member bank shall not extend any additional credit (including a renewal of any existing extension of credit) to any insider of the bank or its affiliates unless such extension or renewal is consistent with the general limit in paragraph (d)(1) of this section.

(3) Exceptions. (i) The general limit specified in paragraph (d)(1) of this section does not apply to the following:

(A) Extensions of credit secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(B) Extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States;

(C) Extentions of credit secured by a perfected security interest in a segregated deposit account in the lending bank; or

(D) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, provided that;

(1) The financial condition of each maker of such consumer paper is reasonably documented in the bank's files or known to its officers;

(2) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(3) The maker of the instrument is not an insider.

(ii) The exceptions in paragraphs (d)(3)(i)(A) through (d)(3)(i)(C) of this section apply only to the amounts of such extensions of credit that are secured in the manner described therein.

(e) Overdrafts. (1) No member bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates n3 on an account at the bank, unless the payment of funds is made in accordance with:

n3 This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates.

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less, provided:

(i) The account is not overdrawn for more than 5 business days; and

(ii) The member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

§ 84. Lending limits

(a) Total loans and extensions of credit

(1) The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this subsection, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) Definitions

For the purposes of this section—

(1) the term "loans and extensions of credit" shall include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and, to the extent specified by the Comptroler of the Currency, such term shall also include any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(2) the term "person" shall include an individual, sole proprietorship, partnership, joint venture, associ-

ation, trust, estate, business trust, corporation, sovereign government or agency, instrumentality, or political subdivision thereof, or any similar entity or organization.

(c) Exceptions

The limitations contained in subsection (a) of this section shall be subject to the following exceptions:

(1) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) The purchase of bankers' acceptances of the kind described in section 372 of this title and issued by other banks shall not be subject to any limitation based on capital and surplus.

(3) Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(4) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitation based on capital and surplus.

(5) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(6) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(7) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent or banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(8)(A) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section.

(B) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or ex-

tensions of credit of each such maker shall be the sole applicable loan limitations.

(9)(A) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a maximum limitation equal to 25 per centum of such capital and surplus.

(B) Loan and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2) of this section, to a limitation of 25 per centum of such capital and surplus.

(10) Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

(d) Authority of Comptroller of the Currency

(1) The Comptroller of the Currency may prescribe rules and regulations to administer and carry out the purposes of this section including rules or regulations to define or further define terms used in this section and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(2) The Comptroller of the Currency also shall have authority to determine when a loan putatively made to a person shall for purposes of this section be attributed to another person.

§ 375b. Prohibitions respecting loans and extensions of credit to executive officers and directors of banks, political or campaign committees, etc.

(1) No member bank shall make any loan or extension of credit in any manner to any of its executve [1] officers, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, except in the case of such a bank located in a city, town, or village with less than thirty thousand in population, in which case such per centum shall be 18 per centum, or to any company controlled by such an executive officer or person, or to any political or campaign committee the funds or services of which will benefit such an executive officer or person or which is controlled by such an executive officer or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer or person and to all companies controlled by such executive officer or person and to all political or campaign committees the funds or services of which will benefit such executive officer or person or which are controlled by such executive officer or person, would exceed the limits on loans to a single borrower established by section 84 of this title. For purposes of this paragraph, the provisions of section 84 of this title shall be deemed to apply to a State member bank as if such State member bank were a national banking association.

(2) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such mem-

[1] So in original. Probably should be "executive".

ber bank, or to any company controlled by such an executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive, director, or person or which is controlled by such executive officer, director, or person, where the amount of such loan or extension of credit, when aggregated with the amount of all other loans or extensions of credit then outstanding by such bank to such executive officer, director, or person and to all companies controlled by such executive officer, director, or person and to all political or campaign committees the funds or services of which will benefit such executive officer, director, or person or which are controlled by such executive officer, director, or person, would exceed an amount prescribed in a regulation of the appropriate Federal banking agency, unless such loan, line of credit, or extension of credit is approved in advance by a majority of the entire board of directors with the interested party abstaining from participating directly or indirectly in the voting.

(3) No member bank shall make any loan or extension of credit in any manner to any of its executive officers or directors, or to any person who directly or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of such member bank, or to any company controlled by such executive officer, director, or person, or to any political or campaign committee the funds or services of which will benefit such executive officer, director, or person or which is controlled by such executive officer, director, or person, unless such loan or extension of credit is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

(4) No member bank may pay an overdraft on an account at such bank of an executive officer or director.

(5) For purposes of this section, an executive officer, director, or person shall be considered to have control of a company if such executive officer, director, or person, directly or indirectly or acting through or in concert with one or more other persons—

(A) owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the company;

(B) controls in any manner the election of a majority of the directors of the company; or

(C) has the power to exercise a controlling influence over the management or policies of such company.

(6) For the purposes of this section—

(A) the term "person" means an individual or company;

(B) the term "company" means any corporation, partnership, business trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, any other form of business entity not specifically listed herein, or any other trust, but shall not include any insured bank or any corporation the majority of shares of which is owned by the United States or by any State;

(C) a person shall be deemed to be a "director" of a member bank or a "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has power to vote more than 10 per centum of any class of voting securities of a member bank" if such person has such relationship with any bank holding company of which such member is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company:

(D) a person shall be deemed to be an "officer" of a member bank if such person is an officer of any bank holding company of which such member bank is a subsidiary, as defined by the Bank Holding Company Act (12 U.S.C. 1841), or with any other subsidiary of such bank holding company;

(E) the term "executive officer" has the same meaning assigned such term under section 375a of this title; and

(F) the term "pay an overdraft on an account" means the payment by a member bank of an amount for an account holder in excess of the funds on deposit in the account and does not include a payment of funds by the member bank in accordance with either a written preauthorized, interest-bearing extension of credit specifying a method of repayment or a written preauthorized transfer of funds from another account of the account holder at that bank.

(7) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this section. The Board may further prescribe rules providing a reasonable period of time after November 10, 1978, within which the amount of outstanding loans or extensions of credit made prior to November 10, 1978, shall be reduced so as to conform to the limitations of this section.